INDEX

	Page
Statement of the case	1
Argument:	
I. The amendments to the Trading with the Enemy Act forbid the return of the property involved here	2
II. Section 9 (a), construed in the light of the amendments, does not warrant the return of appellant's property	7
Appendix A, section 9, with amendments	15
Appendix B, section 2, defining enemies	20

AUTHORITIES

Supreme Court cases:	
A. Bryant Co. v. *N. Y. Steam Fitting Co.*, 235 U. S. 327, 337	8
Market Co. v. *Hoffman*, 101 U. S. 112, 116	8
Peck et al v. *Jenness*, 48 U. S. (7 Hun.) 612, 622	8
United States v. *Landram*, 118 U. S. 81, 85	8
English cases:	
Daimler Co. v. *Continental Tire and Rubber Co.*, 32 T. L. R. 624	13
Steamship St. Tudno, 5 Lloyd's Rep. of Prize Cas. 198	13
The Michigan, 5 Lloyd's Rep. of Prize Cas., 42	13
Other cases:	
Kogler v. *Alien Property Custodian*, 228 Fed., 806	11
Acts of Congress:	
Trading with the Enemy Act (sec. 2)	20
Ibid, subsection (b) sec. 9	3
Ibid., subsection (c) sec. 9	9
Act ending war, sec. 5	7

19120—21†—1

In the Supreme Court of the United States

OCTOBER TERM, 1924

COMPAGNIE INTERNATIONALE DE PRODUITS Alimentaires S. A., appellant

v.

THOMAS W. MILLER, AS ALIEN PROPERTY Custodian of the United States of America, and Frank White, as Treasurer of the United States of America, appellees

No. 412

BRIEF FOR APPELLEES

Statement of the Case

At the time of the seizure by the Alien Property Custodian of the property herein involved the appellant was a corporation of Switzerland, all of whose capital stock except 17.15% thereof belonged to subjects of and residents in countries with which the United States was at war, 55.19% of such capital stock belonging to four persons, to wit, Carl, Richard, Robert, and Walter Franck, subjects of and residents in either Germany or Austria. The property seized consisted principally of 6,250 shares of stock in a

New York corporation, which previously had been transferred to the appellant. It was seized under a demand of the Alien Property Custodian dated July 17, 1918 (R. 9), wherein he determined that Carl, Richard, Robert, and Walter Franck were enemies and that they had "a certain right, title, and interest" in these shares of stock. This action is to recover the property thus seized.

The court has ordered this case submitted with No. 343, *Behn, Meyer & Company, Limited, Appellant*, v. *Thomas W. Miller, as Alien Property Custodian, and Frank White, as Treasurer of the United States*. Inasmuch as the questions involved in this case and in No. 343 are essentially the same, reference is made to our brief in that case, the argument being summarized herein and not repeated in full.

In both cases the question to be determined is whether appellant has a right in equity under the Trading with the Enemy Act, as amended June 5, 1920, and as again amended March 4, 1923, to the return of property seized as enemy-owned property, in view of the fact that the Act as amended, "in respect of *all* money or other property conveyed, transferred, assigned, delivered, or paid to the Alien Property Custodian or seized by him hereunder and held by him or by the Treasurer of the United States" permits return only to such corporations as have less than half of their stock enemy owned. And that question in turn depends upon whether the language of the amendment purporting to apply to "*all* money or other property conveyed, trans-

ferred, assigned, delivered, or paid to the Alien Property Custodian or seized by him" shall be construed to apply to only a *part* of the property so coming into his possession.

Section 9 of the Trading with the Enemy Act with the amendments referred to is set out for convenience of reference in Appendix A, hereto appended. Section 2 of the Act, defining who are enemies, is set out in Appendix B.

ARGUMENT

I

The amendments to the Trading with the Enemy Act forbid the return of the property involved here

The amendment of June 15, 1920, added to the Trading with the Enemy Act (among other provisions) subdivision (b) of Section 9, as follows:

> (b) In respect of all money or other property conveyed, transferred, assigned, delivered or paid to the Alien Property Custodian or seized by him hereunder and held by him or by the Treasurer of the United States, if the President shall determine that the owner thereof at the time such money or other property was required to be so conveyed, transferred, assigned, delivered, or paid to the Alien Property Custodian or at the time when it was voluntarily delivered to him or was seized by him was—
>
> * * * * *
>
> (6) A partnership, association, or other unincorporated body of individuals outside the United States, or a corporation incorporated

> within any country other than the United States, and was entirely owned at such time by subjects or citizens of nations, States, or free cities other than Germany or Austria or Hungary or Austria-Hungary and is so owned at the time of the return of its money or other property hereunder; or

Paragraph (6) of subdivision (b) was one of eight paragraphs. The amendment of March 5, 1923, added three others, of which the last was:

> (11) A partnership, association, or other unincorporated body of individuals, having its principal place of business within any country other than Germany, Austria, Hungary, or Austria-Hungary, or a corporation, organized or incorporated within any country other than Germany, Austria, Hungary, or Austria-Hungary, and that the control of, or more than 50 per centum of the interests or voting power in, any such partnership, association, other unincorporated body of individuals, or corporation, was at such time, and is at the time of the return of any money or other property, vested in citizens or subjects of nations, States, or free cities other than Germany, Austria, Hungary or Austria-Hungary: *Provided*, however, That this subsection shall not affect any rights which any citizen or subject may have under paragraphs (1) of this subsection.

The effect of paragraphs (6) and (11) was to restrict the return of seized property to such corporations as were therein described, at least as to all seized property within the purview of the amendments. It may

fairly be said, we think, that so much is conceded by appellant.

Now we submit that the seized property contemplated by the amendments was *all* property whatsoever which the Alien Property Custodian had taken over as enemy property. Our reasons therefor are these:

First. Such is the express declaration of the first words of the language added by the amendments, an express declaration that removes any ambiguity that might otherwise be said to exist. The amendment is to apply "in respect of *all* money or other property conveyed, transferred, assigned, delivered, or paid to the Alien Property Custodian or seized by him." This language is entirely inconsistent with the contention made throughout the brief of appellant that the amendments were intended to have application only to a part and not to "*all*" property that had been seized. The contention that such property as was refered to in subdivision (a) was intended to be excepted from subdivision (b) disregards the language quoted and that language is nowhere discussed in appellant's brief. It follows immediately subdivision (a) on which appellant relies. It is inconceivable that the word "*all*" would have been used if it was the intention of Congesss to except a part of the property seized so large and important as to call for a whole subdivision of Section 9—originally all of Section 9.

Second. If Congress intended that paragraphs (6) and (11) should refer only to such corporations of

neutral countries as, for example, had done business in enemy countries and were therefore within the letter of the definition of enemy corporations in Section 2, words expressing such a limitation naturally would have been used. None were used. On the contrary, the words which were used describe *all* corporations of neutral countries, any of whose stock (under paragraph 6) or a majority of whose stock (under paragraph 11) was owned by citizens or subjects of enemy countries. There is no restriction here to certain of such corporations. Appellant interpolates the restriction by main force.

Third. Paragraphs (6) and (11) conclusively demonstrate that Congress intended to look within the corporation camouflage to ascertain whether the individuals who owned the stock, and thereby in a real if not a technical sense the property, were enemies and, if they were enemies, to hold the property. It was the property of the nationals of Germany and Austria that was aimed at, as distinguished from merely "technical" enemies. To reach that property Congress in effect in these paragraphs said the fiction of corporate ownership and that the stockholders have no ownership will be disregarded. Obviously, such a purpose strikes at every corporation whose stock or a majority thereof was enemy owned. There was therefore no exception and should have been none in favor of a corporation which was no less a covering for enemies because it may not have done business in enemy countries.

Fourth. The intent of Congress in these amendments that they shall apply to *all* property seized as enemy property although the beneficial interest in enemies was through ownership by corporations of neutral countries in which the enemies were stockholders is corroborated by the terms of Section 5 of the act ending the war (Federal Statutes Annotated, page 68), which provides that the property of all German nationals (and others) which had come into the possession of the United States "*from any source whatsoever*" should be retained until the enemy countries should make certain restitutions to American citizens. (Sec. 5 if set out at page 16 of our brief in the *Behn, Meyer & Co. case*, No. 343.)

II

Section 9 (a), construed in the light of the amendments, does not warrant the return of appellant's property

The appellant seeks to avoid the all-inclusive phraseology of the amendments to the Trading with the Enemy Act by arguing that subdivision (a) of Section 9 should be considered entirely separately from the subdivisions of that Section added by the amendments, as if it were a wholly independent enactment, not to be read together with and as modified by subdivision (b) and other subdivisions added at the same time. Then, having so abstracted from the whole section that part which appellant thinks gives some support to its case, it further argues

that subdivision (a) requires the return of property to any person "not an enemy" and that appellant was "not an enemy" when its property was seized. To this we answer:

First. Section 9, including its several subdivisions, was enacted as a whole at the time of each amendment. It must be construed as a whole. Subdivision (a) can not be read alone without regard to limitations implied in the following subdivisions. All parts of the section must be construed together. (*United States* v. *Landram*, 118 U. S. 81, 85; *A. Bryant Co.* v. *N. Y. Steam Fitting Co.*, 235 U. S. 327, 337; *Market Co.* v. *Hoffman*, 101 U. S. 112, 116; *Peck et al.* v. *Jenness*, 48 U. S. (7 How.) 612, 622.) When construed together it is clear that even if it should be conceded (and it is not conceded) that subdivision (a) standing alone might warrant the return of property belonging to a corporation of a neutral country which had not done business in an enemy country so as to bring it strictly within the class of corporations specifically mentioned in Section 2 of the act, nevertheless such property is not to be returned if, although technically the property of a neutral corporation, in reality it is the property of enemies constituting a majority of the stockholders of such corporation.

Second. The contention made by appellant that it was not the intention of Congress that the amendments should effect any rights that might have existed prior to the amendments not only defies the plain language of subsection (b) but also that of subsection

(e), added at the same time as (b) and providing that:

> No money or other property shall be returned nor any debt allowed under this section to any person who is a citizen or subject of any nation which was associated with the United States in the prosecution of the war, unless such nation in like case extends reciprocal rights to citizens of the United States; nor in any event shall a debt be allowed under this section unless it was owing to and owned by the claimant prior to October 6, 1917, *and as to claimants other than citizens of the United States unless it arose with reference to the money or other property held by the Alien Property Custodian or Treasurer of the United States hereunder.* [Italics ours.]

If the appellant's contention is sound to the effect that subsection (a) of Section 9 must be taken without regard to the rest of the section, then section (e) becomes of no effect whatsoever. Prior to the amendment of June 5, 1920, any individual, not an enemy, could sue to secure the return of his property. This applied to citizens of every nationality, so that a Frenchman or a citizen of Great Britain, provided he did not reside in enemy territory, could, if his property had been wrongfully seized, sue under Section 9 without any restriction, and secure the return thereof. However, subsection (e) provides that no money or other property shall be returned, nor any debt allowed under the section to any person who is a citizen or subject of any nation with which the

United States was associated in the prosecution of the war, unless such nation in like case extends reciprocal rights to citizens of the United States. Here is a very evident restriction upon the formal provisions of Section 9, but if appellant's contention is true, a Britisher, if he is not an enemy, may sue under subsection (a) without any regard to subsection (e), and even though Great Britain does not accord reciprocal rights to American citizens, may secure the return of property or the payment of debts out of enemy property.

Furthermore, subsection (e) provides that no debt can be allowed under Section 9 unless it was owing to and owned by the claimant prior to October 6, 1917. Here is another limitation placed upon at least the apparent provisions of Section 9. Furthermore, subsection (e) provides that as to claimants other than citizens of the United States, no debt can be allowed out of property in the hands of the Custodian, unless it arose with reference to the money or other property held by the Alien Property Custodian or the Treasurer of the United States. Prior to the amendment of June 5, 1920, a German citizen residing in the United States who had not been interned could sue under Section 9 and secure the payment of a debt owing to him from an enemy whose property had been seized.

Since this amendment, however, such a German can not sue and secure the payment of debts unless the debt arose with reference to the property in the hands of the Custodian. The same thing is true

with respect to citizens of France, England, or any other country, other than the United States. Their debt must arise with reference to the property before they can sue. This was not true, however, before the amendment of June 5, 1920. Prior to that date a citizen of Great Britain could secure the payment of his debt against an enemy out of enemy property in the hands of the Custodian, even though it did not arise with reference to the property in the hands of the Custodian. This provision has been sustained by the Courts. *Kogler* v. *Alien Property Custodian*, 288 Fed. 806.

It is apparent then that the amendment of June 5, 1920, did restrict the original Section 9. It must, therefore, follow that the contention of the appellant is unsound, for to follow that contention would entirely eliminate subsection (e) of the Act. Section 9 as amended June 5, 1920, is an entire statute and each part must be construed with respect to every other party. It is true that there are certain features of the amendment which give persons heretofore enemies the right to recover under the Act. It was necessary to make a provision with respect to corporations whose stock was owned by enemies, in view of the confusion that had arisen.

Third. While it must be and is conceded that appellant was not such a corporation as Section 2 specifically described as an enemy, that section also declares that individuals or bodies of individuals, resident subjects of enemy countries, are enemies under the act. If there were no specific reference to

corporations, a liberal interpretation of the reference to individuals and bodies of individuals would certainly justify seizure of property of such individuals or bodies of individuals although clothed in the garb of a neutral corporation. And certainly a liberal interpretation will be given in favor of upholding the war powers of the Executive as against the alleged rights of enemies based on technical distinctions. Now, does the specific reference to corporations in Section 2 preclude such an interpretation? Only if certain minor rules of statutory construction are allowed to overcome an intent clearly to be gathered from the whole of Section 2 and the whole of the Trading with the Enemy Act, an intent that every possible enemy, even those who only in the most technical sense could be denominated enemies, was to be included. To make the intent still more clear, Section 2 authorizes the President to include by proclamation anyone whatsoever within the term "enemy."

Fourth. If, absent the amendments of 1920 and 1923, it could be argued that the act did not authorize the seizure as enemy property of the property owned by enemies through corporations of neutral countries, those amendments make the intention of Congress clear that the corporation covering is to be pierced and regard given to the character of the individuals (whether enemies or otherwise) composing the corporation's stockholders. We submit that the amendments constitute a legislative construction, if one is needed, of the definition of

enemies in Section 2, an explanation thereof, or even (although we think it is not necessary to so contend) an expansion of the term "enemy" within the meaning of the act.

Fifth. The English cases (*Daimler Co.* v. *Continental Tire and Rubber Co.*, 32 T. L. R. 624; *Steamship St. Tudno*, 5 Lloyd's Rep. of Prize Cas. 198; *The Michigan*, 5 Lloyd's Rep. of Prize Cas. 42), more fully discussed in our brief in the companion case, hold that without express statutory authority the government conducting a war could seize as enemy property property which technically was owned by corporations of countries other than enemy countries, but whose stockholders were enemies. The general powers of government arising from law embraced this power. We submit the same was true as to the power of the United States and that the definitions in Section 2 must be liberally construed in favor of upholding powers existing under the common law. True, under the early case of *Brown* v. *United States*, 8 Cranch 110, the United States, without special legislative authorization, can not seize *and confiscate* property of an enemy, but we have seen no case and believe there is none which holds that where an act of Congress authorizes the seizure of enemy property, the power to *seize only*, existing, as we think, independently of legislative authorization, may be so restricted as to prevent the seizure of the property of those who are unquestionably enemies, in whatever manner such property is held by them.

If what we have herein urged is correct, then it follows that appellant's theories that subdivision (a) of Section 9 is not restricted by the amendments and that appellant was not properly regarded as an enemy is unsound. Without those theories, however, of course, appellant has no case.

CONCLUSION

As in the companion case, and for the same reasons, which reasons we have summarized herein, the appellant is not entitled under the law to recover the property seized by the Alien Property Custodian as enemy property. The decision of the court below should be affirmed.

JAMES M. BECK,
Solicitor General.

MERRILL E. OTIS,
Special Assistant to the Attorney General.

NOVEMBER, 1924.

Appendix A

Section 9 of the Trading with the Enemy Act, including the amendment of June 5, 1920, and including also the amendment of March 4, 1923. The amendment of March 4, 1923, added clauses (9), (10), and (11). The amendment of June 5, 1920, added all of subdivision (b) except clauses (9), (10), and (11).

Sec. 9. (a) That any person not an enemy or ally of enemy claiming any interest, right, or title in any money or other property which may have been conveyed, transferred, assigned, delivered, or paid to the Alien Property Custodian or seized by him hereunder and held by him or by the Treasurer of the United States, or to whom any debt may be owing from an enemy or ally of enemy whose property or any part thereof shall have been conveyed, transferred, assigned, delivered, or paid to the Alien Property Custodian or seized by him hereunder and held by him or by the Treasurer of the United States, may file with the said custodian a notice of his claim under oath and in such form and containing such particulars as the said custodian shall require; and the President, if application is made therefor by the claimant, may order the payment, conveyance, transfer, assignment, or delivery to said claimant of the money or other property so held by the Alien Property Custodian or by the Treasurer of the United States, or of the interest therein to which the President shall determine said claimant is entitled: *Provided*, That no such order by the President shall bar any person from the prosecution of any suit at law or in equity against the claimant to establish any right, title, or interest which he may have in such money or other property. If the President shall not so order

within sixty days after the filing of such application or if the claimant shall have filed the notice as above required and shall have made no application to the President, said claimant may institute a suit in equity in the Supreme Court of the District of Columbia or in the district court of the United States for the district in which such claimant resides, or, if a corporation, where it has its principal place of business (to which suit the Alien Property Custodian or the Treasurer of the United States, as the case may be, shall be made a party defendant), to establish the interest, right, title, or debt so claimed, and if so established the court shall order the payment, conveyance, transfer, assignment, or delivery to said claimant of the money or other property so held by the Alien Property Custodian or by the Treasurer of the United States or the interest therein to which the court shall determine said claimant is entitled. If suit shall be so instituted, then such money or property shall be retained in the custody of the Alien Property Custodian, or in the Treasury of the United States, as provided in this Act, and until any final judgment or decree which shall be entered in favor of the claimant shall be fully satisfied by payment or conveyance, transfer, assignment, or delivery by the defendant, or by the Alien Property Custodian, or Treasurer of the United States on order of the court, or until final judgment or decree shall be entered against the claimant or suit otherwise terminated.

(b) In respect of all money or other property conveyed, transferred, assigned, delivered, or paid to the Alien Property Custodian or seized by him hereunder and held by him or by the Treasurer of the United States, if the President shall determine that the owner thereof at the time such money or other property was required to be so conveyed, transferred, assigned, delivered, or paid to the Alien Property Custodian or at the time when it was voluntarily delivered to him or was seized by him was—

(1) A citizen or subject of any nation or State or free city other than Germany or Austria or Hungary

or Austria-Hungary, and is at the time of the return of such money or other property hereunder a citizen or subject of any such nation or State or free city; or

(2) A woman who, at the time of her marriage, was a subject or citizen of a nation which has remained neutral in the war, or of a nation which was associated with the United States in the prosecution of said war, and who, prior to April 6, 1917, intermarried with a subject or citizen of Germany or Austria-Hungary, and that the money or other property concerned was not acquired by such woman, either directly or indirectly, from any subject or citizen of Germany or Austria-Hungary subsequent to January 1, 1917; or

(3) A woman who at the time of her marriage was a citizen of the United States, and who prior to April 6, 1917, intermarried with a subject or citizen of Germany or Austria-Hungary, and that the money or other property concerned was not acquired by such woman, either directly or indirectly, from any subject or citizen of Germany or Austria-Hungary subsequent to January 1, 1917; or who was a daughter of a resident citizen of the United States and herself a resident or former resident thereof, or the minor daughter or daughters of such woman, she being deceased; or

(4) A citizen or subject of Germany or Austria or Hungary or Austria-Hungary and was at the time of the severance of diplomatic relations between the United States and such nations, respectively, accredited to the United States as a diplomatic or consular officer of any such nation, or the wife or minor child of such officer, and that the money or other property concerned was within the territory of the United States by reason of the service of such officer in such capacity; or

(5) A citizen or subject of Germany or Austria-Hungary, who by virtue of the provisions of sections 4067, 4068, 4069, and 4070 of the Revised Statutes, and of the proclamations and regulations thereunder, was transferred, after arrest, into the custody of the

War Department of the United States for detention during the war and is at the time of the return of his money or other property hereunder living within the United States; or

(6) A partnership, association, or other unincorporated body of individuals outside the United States, or a corporation incorporated within any country other than the United States, and was entirely owned at such time by subjects or citizens of nations, States, or free cities other than Germany or Austria or Hungary or Austria-Hungary and is so owned at the time of the return of its money or other property hereunder; or

(7) The Government of Bulgaria or Turkey, or any political or municipal subdivision thereof; or

(8) The Government of Germany or Austria or Hungary or Austria-Hungary, and that the money or other property concerned was the diplomatic or consular property of such Government; or

(9) An individual who was at such time a citizen or subject of Germany, Austria, Hungary, or Austria-Hungary, or who is not a citizen or subject of any nation, State, or free city, and that such money or other property, or the proceeds thereof, if the same has been converted, does not exceed in value the sum of $10,000, or although exceeding in value the sum of $10,000 is nevertheless susceptible of division, and the part thereof to be returned hereunder does not exceed in value the sum of $10,000: *Provided*, That an individual shall not be entitled, under this paragraph, to the return of any money or other property owned by a partnership, association, unincorporated body of individuals, or corporation at the time it was conveyed, transferred, assigned, delivered, or paid to the Alien Property Custodian, or seized by him hereunder; or

(10) A partnership, association, other unincorporated body of individuals, or corporation, and that it is not otherwise entitled to the return of its money or other property, or any part thereof, under this section, and that such money or other property, or

the proceeds thereof, if the same has been converted, does not exceed in value the sum of $10,000, or although exceeding in value the sum of $10,000, is nevertheless susceptible of division, and the part thereof to be returned hereunder does not exceed in value the sum of $10,000: *Provided*, That no insurance partnership, association, or corporation, against which any claim or claims may be filed by any citizen of the United States with the Alien Property Custodian within sixty days after the time this paragraph takes effect, whether such claim appears to be barred by the statute of limitations or not, shall be entitled to avail itself of the provisions of this paragraph until such claim or claims are satisfied; or

(11) A partnership, association, or other unincorporated body of individuals, having its principal place of business within any country other than Germany, Austria, Hungary, or Austria-Hungary, or a corporation, organized or incorporated within any country other than Germany, Austria, Hungary, or Austria-Hungary, and that the control of, or more than 50 per centum of the interests or voting power in any such partnership, association, other unincorporated body of individuals, or corporation, was at such time, and is at the time of the return of any money or other property, vested in citizens or subjects of nations, States, or free cities other than Germany, Austria, Hungary, or Austria-Hungary: *Provided, however*, That this subsection shall not affect any rights which any citizen or subject may have under paragraph (1) of this subsection—

* * * * *

APPENDIX B

Section 2 of the original Trading with the Enemy Act, defining who are "enemies" under the act:

SEC. 2. That the word "*enemy*," as used herein, *shall be deemed to mean*, for the purposes of such trading and of this Act—

(*a*) Any individual, partnership, or other body of individuals, of any nationality, resident within the territory (including that occupied by the military and naval forces) of any nation with which the United States is at war, or resident outside the United States and doing business within such territory, and *any corporation incorporated* within such territory of any nation with which the United States is at war or incorporated *within any country other than the United States and doing business within such territory*.

(*b*) The government of any nation with which the United States is at war, or any political or municipal subdivision thereof, or any officer, official, agent, or agency thereof.

(*c*) Such other individuals, or body or class of individuals, as may be natives, citizens, or subjects of any nation with which the United States is at war, other than citizens of the United States, wherever resident or wherever doing business, as the President if he shall find the safety of the United States or the successful prosecution of the war shall so require, may, by proclamation, include within the term "enemy."

* * * * *

○